THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.6660 OF 2005

DATED: 23.11.2007

Between:

Chandavolu Sai Baba

.. Petitioner

And

The Government of A.P. rep. by the Principal Secretary, Revenue (Endowments-III) Department, Secretariat, Hyderabad and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.6660 OF 2005

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to the proceedings in Roc.No.B2/40372/1998, dated 20.03.2005, issued by the 2nd respondent, pursuant to G.O.Rt.No.180 dated 01.02.2005 issued by the 1st respondent, and to quash the same as arbitrary and illegal.

2. It appears, petitioner initially worked on N.M.R. basis in the 2nd respondent Devasthanam from 1977 to March 1984 and, thereafter, his services were regularized and he has been appointed as Mazdoor on 16.03.1984. While that being so, basing on a report of the Assistant Engineer, dated 18.03.1991, stating that one Y. Jayaramachari, Carpenter and the petitioner have stealthily carried away brass prasadam vessel, by making it into pieces, from Sri TT (Potu), Tirumala, and they were apprehended by police and remanded, the petitioner was placed under suspension, vide proceedings dated 19.03.1991. Further, after conducting a detailed enquiry into the alleged misconduct and calling for explanation from the petitioner, he was removed from service, by an order dated 18.04.1994 of the 2nd respondent. Aggrieved by the same, the petitioner filed an appeal before the Board of Trustees of Devasthanam, under Section 120 of

the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). However, the same was rejected on 28.11.1996. Challenging the same, the petitioner preferred a revision before the 1st respondent, under Section 121 of the Act, but the same was also rejected, by memo dated 15.01.1998. Thereafter, the petitioner preferred a review before the 1st respondent under Section 122 of the Act. The 1st respondent, after considering all the aspects and after careful examination of the records and the enquiry report, found that the petitioner was wrongly implicated and, therefore, allowed the review petition and directed the 2nd respondent to reinstate him into service with immediate effect as Mazdoor, vide G.O.Rt.No.1169 dated 04.06.2001, and it was further stated that with regard to continuity of service and related matters, separate orders will be issued. Pursuant to the said G.O., the petitioner was reinstated into service on 17.07.2001 and was posted at the office of the Executive Engineer-VI Division, Vijayawada. While that being so, the criminal case launched against the petitioner, vide C.C.No.183 of 1991 on the file of the II Additional Munsif Magistrate's Court, Tirupathi, ended in conviction and the petitioner was sentenced to undergo rigorous imprisonment for a period of six months. Aggrieved by the said Judgment, the petitioner preferred an appeal before the III Additional Sessions Judge, Chittoor, but the same was dismissed on 30.12.1994. The petitioner further carried the mater in revision before this Court, in Crl.Rc.No.2 of 1995, and this Court, by order dated 02.11.1996, confirmed the conviction and set aside the sentence of six months rigorous imprisonment and held that the period of imprisonment already undergone by the petitioner was sufficient and further imposed a fine of Rs.1,000/-. While things stood thus, it seems,

upon confirmation of conviction by this Court, the 1st respondent has passed the impugned G.O.Rt.No.180, dated 01.02.2005, suo motu reviewing the order passed by it under Section 122 of the Act, on 04.06.2001, and withdrawing the said order by confirming the removal order passed by the 2nd respondent. Pursuant to the said G.O., the 2nd respondent passed the impugned proceedings, dated 20.03.2005, removing the petitioner from service. Aggrieved by the same, the petitioner preferred the present writ petition.

3. Learned counsel for the petitioner strenuously contended that firstly, the 1st respondent - Government has no power under Section 122_of the Act to further review the orders earlier passed by it and withdraw the same, either suo motu or on application filed by a third party. Secondly, assuming, without admitting, that such power of review is conferred on the authority, it could not have been exercised to the detriment of the interest of the petitioner without putting him on notice.

4. Section 122 of the Act reads as under:

> "Review:- (1) The Government may either *suo motu* or on an application from any person interested made within ninety days of the passing of the order under Section 120 or Section 121, review any such order if it was passed by them under any mistake, whether of fact or of law or in ignorance of any material fact:
>
> Provided that the Government shall not pass any order adversely affecting any person unless such person has been given an opportunity of making his representation.
>
> (2) The Government may stay the execution of any

such decision or order, pending the exercise of their powers under sub-section (1) in respect thereof.

5. A plain reading of the above said Section would not indicate that a second review is available. May be, a suo motu power is available, but that was already exercised under Section 122 of the Act, while issuing G.O.Rt.No.1169 dated 04.06.2001. Again exercising its powers under Section 122 of the Act for a second time for reviewing the said G.O. is not contemplated under the said Section. Moreover, even such power is exercised for the first time, unless and until a notice is issued to the individual, review could not have been taken up. Further, the fact that the petitioner was convicted by a competent Criminal Court and the same was confirmed by this Court in the year 1996, while modifying the sentence of imprisonment, was within the knowledge of the respondents, but they did not take any action immediately. In fact, the order on the review petition filed by the petitioner was passed by the 1st respondent on 04.06.2001 i.e. after five years of the attainment of finality of the criminal proceedings and now the learned counsel for the respondents strenuously contends that in view of the conviction of the petitioner in the criminal case, which was confirmed by this Court with some modification in sentence of imprisonment, the 1st respondent has reviewed the matter for the second time and withdrawn the earlier G.O.Rt.No.1169, while confirming the punishment of removal imposed on the petitioner by the 2nd respondent. This contention of the learned counsel for the respondents seems to be neither legal nor in consonance with the principles of natural justice. It seems, the impugned G.O.Rt.No.180, dated 01.02.2005, was passed in view of the conviction of the petitioner in the criminal proceedings. In fact, criminal proceedings and

departmental proceedings are two separate proceedings. Even otherwise, nothing prevented the respondents from reviewing the earlier order and removing the petitioner from service, immediately after the Judgment was delivered by the Criminal Court, convicting the petitioner. Instead of that, they allowed the petitioner to continue in service till 2001 and, thereafter, reviewed the matter for second time, after nine years of confirmation of conviction of the petitioner by this Court in 1996. The respondents confused themselves and mixed the departmental proceedings with that of criminal proceedings. Further, it is for the disciplinary authority to initiate action against the petitioner on conviction, but not the reviewing authority.

6. For all the above reasons, the impugned order, dated 20.03.2005, issued by the 2nd respondent, pursuant to G.O.Rt.No.180 dated 01.02.2005 issued by the 1st respondent, is liable to be set aside and is, accordingly, set aside. In the result, the petitioner shall be reinstated into service forthwith with continuity of service, but in the facts and circumstances of the case, without any backwages.

7. The writ petition is allowed to the extent indicated above. No order as to costs.

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JUSTICE C.V. RAMULU

23rd November, 2007.

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